IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.Rev.Pet.No. 3333 of 2007()

CRA.216/2005 of ADDL. SESSIONS COURT (ADHOC)-II, KALPETTA
CC.322/2001 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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REVN. PETITIONER: APPELLANTS/ACCUSED NOS.3 & 4

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1. JYOTISH, S/O. VELAYUDHAN,
KANJIRATHODIYIL VEEDU, IMMALATHOOR, KOZHIKODE.

2. SABIN, S/O. SASEENDRAN,
PADDIPARAMBATHU VEEDU, VANDERI, KOZHIKODE.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE - ADDL. S.I. OF POLICE,
VYTHIRI, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 3333 of 2007

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Dated, this the 19th day of September 2007

O R D E R

Revision petitioners who are accused Nos. 3 and 4 and in C.C. No. 322 of 2001 on the file of the Chief Judicial Magistrate, Kalpetta for an offence punishable under Section 511 of 379 read with Sec. 34 I.P.C. challenge the conviction entered and the sentence passed concurrently by the courts below.

2. The case of the prosecution can be summarised as follows:-

On 30-6-2001 at about 11.45 p.m. the four accused persons in furtherance of their common intention to commit theft attempted to commit theft of diesel from the diesel tank of a lorry bearing Reg. No. K.L.01.G.3843 parked by the side of the Kozhikode-Kalpetta public road in front of the house of P.W.1 bearing house VII/477 of Vythiri Panchayath.

3. On the side of the prosecution 4 witnesses were examined as P.Ws 1 to 4 and 3 documents were marked as Exts.P1 to P3.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against

them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

5. The learned chief Judicial Magistrate, after trial, as per judgment dated 22-10-2005 found all the accused guilty of the offence and sentenced each of them to suffer simple imprisonment for six months and to pay a fine of Rs. 1,000/- and on default to pay the fine to suffer simple imprisonment for one month. Eventhough the revision petitioner preferred an appeal as Criminal Appeal 216 of 2005 before the Addl. Sessions court, (Adhoc)-II, Kalpetta, the said appeal was dismissed as per judgment dated 21-8-2007 confirming the conviction entered and the sentence passed against the revision petitioner. Hence, this revision.

6. The learned counsel appearing for the revision petitioner assailed the conviction recorded against them. In as much as the courts below have entered the conviction , after a careful evaluation of the oral and documentary evidence in the case, I see little scope of interference by this Court sitting in the rarefied revisional jurisdiction. The conviction is accordingly confirmed.

7. What now survives for consideration is the adequacy of sentence. The defence version of the occurrence was that while they were travelling in their jeep, their fuel got exhausted and as it was high range area there was no possibility of getting fuel and they were driven to the necessity of looking for some diesel and that it was not a case of theft at all. The revision petitioners claim to be the passengers in the Jeep. The evidence

on record will show that the four accused persons came in a Jeep and it was in that jeep that P.W.1 took A1 and A2 to the police station. The antecedents of the revision petitioners were got enquired through the Public Prosecutor who reported that they have no previous history of having involved in any crime. The attempted theft of diesel, was not committed also. They did not even open the lid of the petrol tank of the parked lorry. Taking into account the entire facts and circumstances of the case, I do not think that penal servitude by way of incarceration is called for in this case and that interests of justice will be adequately met by imposing an appropriate fine. Accordingly, the sentence imposed on the revision petitioners is set aside and instead each of them shall pay fine of Rs. 3,000/- (Rupees three thousand only) for the conviction under Section 511 of 379 I.P.C. and on default to pay the fine shall undergo simple imprisonment for 20 days.

The fine amount shall be remitted within one month from today. Confirming the conviction entered but modifying the sentence passed against the revision petitioners , this revision is disposed of.

V. RAMKUMAR, JUDGE

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